

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TIERRA LLOYD,

Plaintiff,

v.

KERING GROUP, et al.,

Defendants.

Case No. 2:24-cv-02209-APG-BNW

REPORT AND RECOMMENDATION

On November 25, 2024, Plaintiff filed her complaint. ECF No. 1. On February 25, 2025, the Court issued its Notice of Intent to Dismiss because no proofs of service had been filed for Defendants and gave Plaintiff until March 27, 2025 to file said proofs. ECF No. 10. On the date of the deadline, Plaintiff filed a declaration from her counsel explaining that the parties agreed to submit to arbitration. ECF No. 11. The declaration indicated, however, that the parties disagreed on whether (1) the Court should retain jurisdiction of the case during arbitration or (2) Plaintiff should dismiss the case. *Id.* The Court explained that it could not maintain the action unless Defendants were served (or waived service) and gave Plaintiff until April 28, 2025 to file the proofs of service. ECF No. 12. To date, no proofs have been filed and Defendants have not otherwise appeared. As a result, the Court recommends that Plaintiff's case be dismissed without prejudice.

The law permits a district court to dismiss an action based on a party's failure to comply with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the availability of less-drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d

1 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.
2 1987)).

3 The first two factors, the public’s interest in expeditiously resolving this litigation and the
4 Court’s interest in managing its docket, weigh in favor of dismissal of Plaintiff’s claims. The third
5 factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of
6 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
7 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
8 factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

9 The fifth factor requires the Court to consider whether less-drastic alternatives can be used
10 to correct the party’s failure that brought about the Court’s need to consider dismissal. Courts
11 “need not exhaust every sanction short of dismissal before finally dismissing a case but must
12 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
13 Cir. 1986). Because this action cannot proceed without Defendants being served, the only
14 alternative is to enter another order setting another deadline. The circumstances here do not
15 indicate that Plaintiff needs additional time. Therefore, setting another deadline is not a
16 meaningful alternative. So, the fifth factor favors dismissal.

17 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
18 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four
19 factors support dismissal or where at least three factors “strongly” support dismissal).

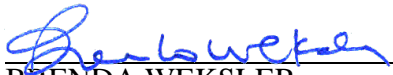
20 **IT IS THEREFORE RECOMMENDED** that this action is **DISMISSED without**
21 **prejudice** for failure to comply with the Court’s service deadline.

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23 **NOTICE**

24 This report and recommendation is submitted to the United States district judge assigned
25 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
26 may file a written objection supported by points and authorities within fourteen days of being
27 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
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1 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,
2 1157 (9th Cir. 1991).

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4 DATED: April 30, 2025

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6 BREND A WEKSLER
7 UNITED STATES MAGISTRATE JUDGE
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